

REMARKS

Reconsideration of the First Action/Final Office Action of May 18, 2006 and the Advisory Action of October 5, 2006 is respectfully requested. Enclosed herewith is a two month extension of time with requisite small entity fee (minus the one month previously paid).

In the present application, claims 1-41, 43 and 45 to 51 are pending, with dependent claims 26-29, 31, 32, 34 and 41 deemed to contain allowable subject matter and the remainder rejected under the prior art as summarized below.

A) Claims 1-25, 30, 33, 35, 36, 38, 40, 43 and 45-51 asserted to be anticipated by the noted "User's Guide";

B) Claims 37 and 39 are asserted in the Office Action as being considered obvious in view of the "User's Guide".

Each of these rejections is respectfully traversed. Amongst the rejected claims, claims 1, 45, 46, and 47 represent independent claims and each of these claims is submitted to patentably distinguish over the User's Guide reference. The arguments presented in the Amendment of September 18, 2006 are incorporated herein by reference. In addition, in the present Amendment, independent claims 1, 45, and 47 have been further amended and are submitted to even further distinguish over the references of record.

Entry of the claim amendments is respectfully submitted for the purpose of placing this application in immediate condition for allowance, for purposes of appeal and for the reason that the first action final is submitted to have been improper such that the present claim entries should be admitted. That is, This First Office Action following a filing of an RCE with accompanying Preliminary Amendment with claim revisions made in the Preliminary Amendment was made final. The imposition of finality in this case is

respectfully submitted to be improper. In the Office Action the grounds set forth is that the claimed invention set forth in the post RCE application was directed at the “same invention” in the pre-RCE filing application. As an example useful in analyzing the criteria involved in what constitutes a “same invention” reference is made to the statutory double patenting discussion of that term set forth below.

804 Definition of Double Patenting [R-3] - 800 Restriction in Applications Filed Under 35 U.S.C. 111; Double Patenting

*A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor" Thus, the term "same invention," in this context, means an invention drawn to **identical subject matter** A reliable test for double patenting under 35 U.S.C. 101 is whether a claim in the application could be literally infringed without literally infringing a corresponding claim in the patent.*

A comparison of the Preliminary Amendment claims to the claims directly preceding that filing reveals at least one non-identical subject matter claim that can not meet the test set out above. Accordingly, withdrawal of the finality status of the present case and entry of the claim amendments presented herein is respectfully requested.

Relative to the merits of the final Office Action and the Advisory Action, in the commentary accompanying the advisory action, there it is indicated that “slide” is considered to include running along without contact. Current claims 1 and 45 include an indication of direct contact thus precluding the reliance on the “Guide” reference.

Claim 1 also includes reference to an end region of the diverged film webs running along the planar walls which, as noted in the background of the invention, helps avoid wrinkling in a region of the film webs subject to edge seal formation, as a seal formed on a wrinkled surface can lead to foam precursor spillage and foam stuck over sensitive components.

Claim 45 has been amended to include reference to the film contact along the planar side walls extending down from the diverging section of the dispenser housing which is a feature not met by the dancing roller and below positioned module housing 9. Claim 47 has also been amended with an indication that the interior surface of the diverged film sections are in contact with the smooth surface of the dispenser housing.


Dependent claim 49 has been re-introduced (the Advisory Action indicating that the previous proposed claims would be entered upon appeal). Current claim 47 thus does not include the claim 49 subject matter, but rather clarification as to the interior surfaces of the diverged film webs being in contact with smooth surface regions of the dispenser.

Claims 46 and 47 also refer to the motor for the mixing module positioning relative to the dispenser housing and film. This relationship, which helps avoid highly detrimental foam build up in the motor, is not disclosed by the "Guide" (which uses an internally positioned electric motor in the manifold housing 9). It is noted that no commentary was received relative to this claimed positioning of the motor and the incorrect reference to motor 13 of the "Guide" as running the dispenser valve in the Advisory Action.

If any fees are due in this filing, please charge the fees to Deposit Account No. 02-4300. If an extension of time is necessary and not included herewith, such an extension is requested. The extension fee should be charged to Deposit Account No. 02-4300.

Respectfully submitted,
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